

U.S. Department of Justice

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United States Attorney Western District of Missouri (816) 374-3122 FTC

sent to:

549 United States Courthouse 811 Grand Avenue Kansas City, Missouri 64106

October 20, 1986

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CNSL

Bryan G. Redd Trial Attorney
Environmental Enforcement Land and Natural Resources Div. 10th and Pennsylvania Avenue N.W. Washington, D.C. 20530

> Re: United States of America v. Walter C. Carolyn et al., Civil No. 86-1174-CV-W-9

Dear Mr. Redd:

Enclosed herewith please find a copy of the Complaint filed this date in the subject matter.

Yours very truly,

ROBERT G. ULRICH United States Attorney

VERNON A. POSCHEL Assistant United States Attorney

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VAP:jb

Enclosure

cc:

David Tripp Regional Counsel Environmental Protection Agency 726 Minnesota Avenue Kansas City, Kansas 66101



#### SUMMONS IN A CIVIL ACTION

# ### Hnited States District Court Western, Missouri UNITED STATES OF AMERICA UNITED STATES OF AMERICA V. WALTER C. CAROLAN: MARTHA C. ROSE CHEMICALS, INC., AMERICAN STEEL WORKS, INC., AND W. C. CAROLAN CO. INC.

#### YOU ARE HEREBY SUMMONED and required to serve upon

Vernon A. Poschel
Assistant United States Attorney
549 United States Courthouse
811 Grand Avenue
Kansas City, Missouri 64106
(816) 374-3122

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

| CLERK                        | DATE        |
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| R. F. Connor                 |             |
| (BY) DEPUTY CLERK  Q. Dudley | OCT 20 1986 |

#### THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION



UNITED STATES OF AMERICA,

Plaintiff.

v.

Civil Action No.

COMPLAINT 86-1174@V-W-9

WALTER C. CAROLAN; MARTHA C. ROSE CHEMICALS, INC.; AMERICAN STEEL WORKS, INC.; and, W. C. CAROLAN COMPANY, Inc.,

Defendants.

Administrator of the United States Environmental Protection Agency -
(hereinafter "EPA"), alleges the following:

## INTRODUCTION

1. This is a civil action for injunctive relief brought pursuant to Sections 16 and 17 of the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629 (1982 & Supp. II 1984) (hereinafter "TSCA").-

## JURISDICTION AND VENUE

- 2. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 2616 and 28 U.S.C. §§ 1331, 1345 and 1355.
- 3. Pursuant to 15 U.S.C. § 2616(a)(2) and 28 U.S.C. § 1391(b),(c), venue is proper in the Western District of Missouri because the defendants reside and are doing and/or transacting business in this district and the acts, omissions or transactions constituting violations occurred in this district.

4. Pursuant to 11 U.S.C. §362(b)(3),(4), this action is not stayed by the pending bankruptcy matter <u>In re Martha C.</u>

Rose Chemicals, <u>Inc.</u>, No. 86-02787-2 (Bankr. W.D. Mo.)

# DEFENDANTS

- 5. At all times relevant to this complaint, defendant Martha C. Rose Chemicals, Inc., a Missouri corporation, has been an owner and/or operator of a facility located at 500 West McKissock, Holden, Missouri (hereinafter "Holden facility") at which polychlorinated biphenyls (hereinafter "PCBs") have been handled, stored, treated and/or disposed since on or about January 1982. The administrative office of Martha C. Rose Chemicals, Inc. is located at 2459 Charlotte Street, Kansas City, Missouri.
- 6. At all times relevant to this complaint, defendant American Steel Works, Inc., a Kansas corporation, has been an owner and/or operator of the Holden facility. The Missouri administrative office of American Steel Works, Inc. is located at 2459 Charlotte Street, Kansas City, Missouri.
- 7. At all times relevant to this complaint, defendant W.C. Carolan Company, Inc., a Missouri corporation, has been an owner and/or operator of the Holden facility. The administrative office of W.C. Carolan Company, Inc. is located at 2459 Charlotte Street, Kansas City, Missouri.
- 8. At all times relevant to this complaint, defendant Walter C. Carolan has been the chief executive officer, president and sole stockholder of American Steel Works, Inc. and W.C. Carolan

Company, Inc. and the chief executive officer, president and majority stockholder of Martha C. Rose Chemicals, Inc. and has controlled, managed and/or directed the PCB-related activities of the above-named corporations at the Holden facility. At all times relevant to this complaint, defendant Walter C. Carolan has been an owner and/or operator of the Holden facility.

9. Each of the defendants Walter C. Carolan, Martha C. Rose Chemicals, Inc., American Steel Works, Inc. and W.C. Carolan Company, Inc. (hereinafter "defendants") is a "person" as that term is defined in 40 C.F.R. § 761.3.

# THE HOLDEN FACILITY

- 10. Since on or about January 1982, the defendants have owned and/or operated the Holden facility to, <u>inter alia</u>, process PCB transformers and PCB capacitors for disposal and to decontaminate PCB mineral oil dielectric fluids.
- 11. By virtue of their processing, distribution in commerce, use and/or disposal of "PCBs" and/or "PCB Items" (as those terms are defined in 40 C.F.R. § 761.3) at the Holden facility, at all times relevant to this complaint defendants Martha C. Rose Chemicals, Inc., American Steel Works, Inc. and W. C. Carolan Company, Inc. have been and continue to be subject to the requirements of TSCA and 40 C.F.R. Part 761.
- 12. By virtue of his control, management and/or direction of the PCB-related activities of Martha C. Rose Chemicals, Inc.,

American Steel Works, Inc. and W. C. Carolan Company, Inc. at the Holden facility, at all times relevant to this complaint defendant Walter C. Carolan has been and continues to be subject to the requirements of TSCA and 40 C.F.R. Part 761.

- 13. Pursuant to TSCA Section 16(a), 15 U.S.C. § 2615(a), on or about February 25, 1985 the EPA issued an administrative Complaint and Notice of Opportunity for Hearing, TSCA Docket No. VII-84-T-331, against Martha C. Rose Chemicals, Inc. which alleged violations at the Holden facility of federal regulations pertaining to the processing, use, distribution in commerce, disposal, storage and marking of PCBs.
- 14. On September 27, 1985 the above-referenced administrative Complaint was resolved by a Consent Agreement and Final Order. By Walter C. Carolan, Martha C. Rose Chemicals, Inc. agreed, interalia, to comply with the applicable PCB regulations, to revise its PCBs inventory system and pay a \$94,200 civil penalty, \$48,200 of which was deferred contingent on compliance with the terms of the Consent Agreement and the \$46,000 balance was to be paid in installments.
- 15. Defendant Martha C. Rose Chemicals, Inc. has violated the terms of the above-referenced Consent Agreement and Final Order because, <u>inter alia</u>, it has not revised its PCB inventory system and its civil penalty installment payments are in arrears.

# FIRST CLAIM FOR RELIEF

- 16. Plaintiff realleges paragraphs 1 through 15 above as if set forth below.
- 17. In the operation of the Holden facility, defendants "store for disposal" "PCBs" at concentrations of 50 ppm or greater and "PCB Items" with PCB concentrations of 50 ppm or greater, as those terms are defined in 40 C.F.R. § 761.3.
- 18. In the operation of the Holden facility, defendants store for disposal non-liquid PCBs in "PCB Containers" (as that term is defined in 40 C.F.R. § 761.3). which must comply with the specifications set forth in 49 C.F.R. §§ 178.80, 178.82, 178.115, pursuant to 40 C.F.R. § 761.65(c)(6).
- 19. Defendants have violated and continue to violate
  40 C.F.R. § 761.65(c)(6) and Sections 6(e) and 15 of TSCA, 15 U.S.C.
  §§ 2605(e), 2614, by storing for disposal non-liquid PCBs in PCB containers which do not comply with the specifications of 49 C.F.R.
  §§ 178.80, 178.82, 178.115.
- 20. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 15 U.S.C. \$ 2616.

#### SECOND CLAIM FOR RELIEF

21. Plaintiff realleges paragraphs 1 through 15 above as if fully alleged below.

- 22. In the operation of the Holden facility, defendants "store for disposal" "PCBs" at concentrations of 50 ppm or greater and "PCB items" with PCB concentrations of 50 ppm or greater, as those terms are defined in 40 C.F.R. § 761.3.
- 23. In the operation of the Holden facility, defendants store for disposal "PCB Articles" and/or "PCB Containers" (as those terms are defined in 40 C.F.R. § 761.3) which must be dated when they are placed in storage, pursuant to 40 C.F.R. § 761.65(c)(8).
- 24. Defendants have violated and continue to violate

  40 C.F.R. § 761.65(c)(8) and Sections 6(e) and 15 of TSCA, 15 U.S.C. §§ 2605(e), 2614, by storing PCB Articles and/or PCB Containers which do not bear storage dates.
- 25. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 42 U.S.C. \$ 2616.

# THIRD CLAIM FOR RELIEF

- 26. Plaintiff realleges paragraphs 1 through 15 above as if fully alleged below.
- 27. In the operation of the Holden facility, defendants "store for disposal" "PCBs" at concentrations of 50 ppm or greater and "PCB Items" with PCB concentrations of 50 ppm or greater, as those terms are defined in 40 C.F.R. § 761.3.

- 28. As the owners and/or operators of the Holden facility which is used for the storage of PCBs and PCB items designated for disposal, defendants are subject to the facility requirements set forth in 40 C.F.R. § 761.65(b)(1).
- 29. Defendants have violated and continue to violate 40 C.F.R. § 761.65(b)(1)(ii),(iii) and Section 6(e) and 15 of TSCA, 15 U.S.C. §§ 2605(e), 2614, by failing to have an adequate floor which has continuous curbing with a minimum six inch high curb with no openings that would permit liquids to flow from the curbed area.
- 30. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 15 U.S.C. § 2616.

# FOURTH CLAIM FOR RELIEF

- 31. Plaintiff realleges paragraphs 1 through 15 above as if fully alleged below.
- 32. In the operation of the Holden facility, defendants store PCB containers with PCB concentrations at 50 ppm or greater.
- 33. As a result of the storage of PCB containers with PCB concentrations at 50 ppm or greater, defendants have been subject to the facility requirements of 40 C.F.R. § 761.65, pursuant to 40 C.F.R. § 761.60(c)(3).
- 34. Defendants have violated and continue to violate 40 C.F.R. § 761.(c)(3) and Sections 6(e) and 15 of TSCA, 15 U.S.C.

- §§ 2605(e), 2614, by storing PCB containers in uncurbed areas which do not comply with the facility requirements of 40 C.F.R. § 761.65.
- 35. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 15 U.S.C. § 2616.

# FIFTH CLAIM FOR RELIEF

- 36. Plaintiff realleges paragraphs 1 through 15 above as if fully alleged below.
- 37. Pursuant to 40 C.F.R. § 761.40(a), defendants have been required to mark all the PCB containers at the Holden facility in accordance with the marking format set forth in 40 C.F.R. § 761.45.
- 38. Defendants have violated and continue to violate 40 C.F.R. § 761.40(a) and Sections 6(e) and 15 of TSCA, 15 U.S.C. § 2605(e), 2614, by failing to mark the PCB containers at the Holden facility in accordance with 40 C.F.R. § 761.45.
- 39. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 15 U.S.C. § 2616.

## SIXTH CLAIM FOR RELIEF

40. Plaintiff realleges paragraph 1 through 15 above as if fully alleged below.

- 41. In the operation of the Holden facility, defendants "store for disposal" PCBs at concentrations of 50 ppm or greater and "PCB items" with PCB concentrations of 50 ppm or greater, as these terms are defined in 40 C.F.R. § 761.3.
- 42. Pursuant to 40 C.F.R. § 761.65(a) defendants have been required to remove from storage and properly dispose of (in accordance with 40 C.F.R. § 761, Subpart D) each PCB Article and/ or PCB Container within one year from the date when it was first placed into storage.
- 43. Defendants have violated and continue to violate
  40 C.F.R. § 761.65(a) and Sections 6(e) and 15 of TSCA, 15 U.S.C.
  §§ 2605(e), 2614, by failing to properly dispose of PCB Articles
  and/or PCB Containers within one year from the date when the PCB
  Articles and/or PCB Containers were first placed into storage.
- 44. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 15 U.S.C. § 2616.

# SEVENTH CLAIM FOR RELIEF

- 45. Plaintiff realleges paragraphs 1 through 15 above as if fully alleged below.
- 46. Defendant Martha C. Rose Chemicals, Inc. has failed to pay the \$74,200 balance due on the civil penalty assessed in the TSCA administrative Consent Agreement and Final Order, Docket No. VII-84-T-331, entered on September 27, 1985.

47. Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), defendant Martha C. Rose Chemicals, Inc. is subject to the entry of a judgment in the amount of \$74,200 plus interest at currently prevailing rates.

WHEREFORE, the United States of America requests that the court grant the following relief:

A. Find each defendant in violation of Sections 6(e) and 15 of TSCA, 42 U.S.C. §§ 2605(e), 2614, and order each defendant jointly and severally to comply with all applicable requirements of Section 6(e) of TSCA;

- B. Enter judgment against defendant Martha C. Rose Chemicals, Inc. in the amount of \$74,200 plus interest;
- Award the United States of America its costs and attorney fees in this action; and,
- J. Order such further relief as this court may deem appropriate.

Respectfully submitted,

Assistant' Attorney General

Land and Natural Resources

Division

United States Attorney for the Western District of Missouri - 11 -

VERNON A. POSCHEL Assistant United States Attorney

549 U.S. Courthouse 811 Grand Avenue

Kansas City, Missouri 64106 Telephone: (816) 374-3122

BRYAN GOOGA REDD, Attorney

Environmental Enforcement Section Land and Natural Resources Division United States Department of Justice 10th & Pennsylvania Avenue, N.W. Washington, D.C. 20530 Room 7307

#### Of Counsel:

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ANNA THODE Office of Enforcement and Compliance Monitoring U.S. Environmental Protection Agency 401 M Street, S.W. Washington, D.C.

#### **CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filling and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

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